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10/645,885	08/21/2003	Paul Roland Bergquist	J6819(C)	8190

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UNILEVER INTELLECTUAL PROPERTY GROUP
700 SYLVAN AVENUE,
BLDG C2 SOUTH
ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/645,885
Filing Date: August 21, 2003
Appellant(s): BERGQUIST ET AL.

MAILED
DEC 14 2006
GROUP 1700

Milton L. Honig
For Appellant

Corrected EXAMINER'S ANSWER

This is in response to the appeal brief filed April 28, 2006 appealing from the Office actions mailed March 28, 2006 and April 21, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,808,467	SUSKIND et al.	2-1989
EP 0308320A	SUSKIND et al.	3-1989
6,110,848	BOUCHETTE	8-2000
5,951,991	WAGNER et al.	9-1999
6,723,330	BERGQUIST	4-2004
6,428,799 B1	CEN et al.	8-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

- The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 1, 3-4, 7-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As explained above, the Specification provides support for polypropylene fibers and not for “synthetic fibers”. (Refer to page 7, paragraph [0017] of the Specification).

Claim Rejections - 35 USC § 103

- The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- **Claim 1, 3-4, 13-15, 17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. (US 4,808,467) which is an equivalent to EP 0308320 A in view of BOUCHETTE (US 6,110,848).**

SUSKIND et al. discloses a fabric produced by hydro entangling a web with a basis weight of 0.3 ounce per square yard of continuous nylon filaments between two 0.9 oz/sq. yd. wet laid webs of pulp and polyethylene terephthalate. (Col. 7, lines 14-35). It is further noted that the SUSKIND et al. reference further teaches that the basis weight of the base web (central area) is in the range of 0.15 to 0.8 ounce per square yard. (Refer to Col. 3, lines 3-6) Those range with the values disclosed in the examples for the wet laid webs meet the presently claimed ratio ranges from 4:1 to 2:1. It is noted that the reference teaches using the material as absorbent materials. (Col. 1, lines 48-68).

SUSKIND fails to teach the use of fibers consisting of “synthetic fibers” in the areas of higher basis weight.

BOUCHETTE discloses a three-ply sandwich structured hydro entangled web in which the top and bottom plies comprise synthetic fibers and the middle ply comprises cellulosic fibers. The middle layer cellulosic fiber can optimally be wholly or partially replaced with synthetic fibers. The hydro entangled webs of the reference are useful in the

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manufacture of towels, wet wipes, industrial wipes and medical gowns. (Abstract) Among the suitable synthetic fibers disclosed by the reference are polyolefins, polyethylenes, polypropylenes, polyesters, and polyamides, among others. (Col. 4, lines 17-18)

Since both references are directed to hydro entangled fabrics useful in the field of disposable medical applications, the purpose disclosed by BOUCHETTE would have been recognized in the pertinent art of SUSKIND.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the areas of higher basis weight of SUSKIND which form the outside surfaces of the material and substitute the wood pulp material with synthetic fibers with the motivation of maximize the desirable hand feel associated with synthetics compared to wood pulp as disclosed by BOUCHETTE. (Col. 2, lines 59-62).

Although SUSKIND et al. and BOUCHETTE does not explicitly teach the claimed Air Permeability it is reasonable to presume that this property is inherent to textile formed from the combination of SUSKIND et al. and BOUCHETTE. Support for said presumption is found in the use of like materials (i.e. hydro entangled structure made with similar materials). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of Air Permeability from 300 to 1000 would obviously have been present one the product of SUSKIND et al. in combination with BOUCHETTE is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC 102. Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

It is further noted that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the permeability of the fabric and provide with a higher permeability with the motivation of producing a material with a higher degree of absorption capacity as shown by SUSKIND. (Refer to properties of materials in examples)

- **Claims 7-9, 12, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and BOUCHETTE as applied above, and further in view of WAGNER et al. (US 5,951,991).**

While SUSKIND et al. discloses the structure of the nonwoven hydro entangled textile, it fails to teach the use of a cleansing composition comprising a lathering surfactant as claimed herein.

WAGNER et al. relates to a substantially dry, disposable, personal cleansing product. The reference teaches the use of apertured hydro entangled substrates. (Refer to Col. 7, lines 33-col. 8, lines 17) The reference teaches the use of from about 0.5% to about 40% lathering surfactant based on the weight of the substrate. (Col. 8, lines 45-49) The reference further teaches the use of a conditioning emulsion comprising from about 0.25% to about 1505 of the substrate. (Col. 14, lines 2-24)

Since the references are directed to high strength hydro entangled materials, the purpose disclosed by WAGNER et al. would have been recognized in the pertinent art of SUSKIND et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the substrate of SUSKIND et al. and provide with a

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cleansing composition with lathering surfactant with the motivation of producing a personal cleansing product as disclosed by WAGNER. (Col. 1, lines 15-39)

- **Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al., BOUCHETTE and WAGNER as applied to claim 7 above, and further in view of BERGQUIST (US 6,723,330 B2).**

While WAGNER teaches a substantially dry, disposable, personal cleansing product, it fails to teach the use of effervescent ingredients that would produce foam upon contact with water.

BERGQUIST teaches an article for cleansing body surfaces that includes an effervescent cleansing composition capable of generating foam upon contact with water. (Abstract) The reference teaches the use of sodium bicarbonate and citric acid. (Col. 2, lines 37-39)

Since this reference is also directed to a substantially dry cleansing composition, the purpose disclosed by BERGQUIST would have been recognized in the pertinent art of WAGNER.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the cleansing composition and provide it with the effervescent composition with the motivation of generating a foam upon contact with water without the need to mechanically treat the material to produce the foam.

(10) Response to Argument

- Appellants argue that polypropylene is a species of synthetic fiber and representative of the generic synthetic fiber category, and that those of skill in the art well understand that polypropylene is representative of synthetic fibers. Further, Appellants refer to their

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specification at page 8, paragraph [0022], which lists a series of patent publications, which are “all herein incorporated by reference” and argue that these explicitly disclose “synthetic” fibers and identify polypropylene as a representative one.

As stated in the previous office action, the alleged support for the term “synthetic fibers” is not proper since Appellants are trying to claim a broader term than what is supported by the Specification. The Specification provides support for polypropylene fibers forming the areas of higher basis weight, but not support for the numerous materials encompassed by the term synthetic. There is no question that a polypropylene fiber is a synthetic fiber, but the disclosure does not provide support for the use of every single species encompassed in the broad term “synthetic fibers” as claimed. With regards to the patent publications incorporated by reference in the Specification, it is noted that these references are incorporated to show methods on how textiles are impregnated or coated with lathering surfactants or skin conditioners and not to particularly provide support for the use of any type of synthetic fiber in the claimed higher basis weight areas of the claimed invention. It is noted that the essential novelty, the essence of the invention, must be described in such details as to enable those persons skilled in the art to make and utilize the invention. (Refer to MPEP 608.01(p) [R-3]) It is the Examiner’s position that the Specification of the present application does not provide support for the use of every single species encompassed in the broad term “synthetic fibers” to form the fibers of the claimed higher basis weight areas of the present invention.

- Appellants argue that the SUSKIND reference focus upon a textile containing wood pulp versus the presently claimed invention in which there is no wood pulp problem that is being solved nor is wood pulp incorporated into this textile. With regards to the basis

weight, Appellants argue that the basis weight of SUSKIND has much to do with wood pulp fiber content being within the two outer layers sandwiching the central area and conclude that by removing the wood pulp, one significantly change (and likely invert) basis weights from outer layer to central layer.

It is first noted that the present invention has a central area surrounded on both sides by areas formed of fibers consisting of synthetic fibers. The invention as claimed in the independent claims does not limit the central area to consist of synthetic fibers, just the areas surrounding the central area. It is noted that the web of SUSKIND et al. provides a fabric produced by hydro entangling and their invention is also applicable in the construction of wipes. (Refer to Col. 1, lines 39-41) The Examiner has relied on the structure of SUSKIND et al. as it provides the presently claimed central area sandwiched between two other areas of higher basis weight. While SUSKIND et al. provides a similar structure, it fails to use fibers consisting of “synthetic fibers” in the areas of higher basis weight and instead used a blend of synthetic and pulp fibers in those areas.

The Examiner relies on the teachings of BOUCHETTE that also discloses a hydro entangled web, useful in the manufacture of wet wipes and industrial wipes, which uses polypropylene fibers in the top and bottom plies of their structure. The Examiner finds that such combination is proper as both references are directed to hydro entangled fabrics useful in the field of disposable medical applications and the use of synthetic fibers such as polypropylene fibers in the top and bottom area of the structure of SUSKIND et al. instead of using a blend of synthetic fibers and pulp would have been obvious at the time the invention was made to a person having ordinary skill in the art with the motivation of maximize the desirable and hand feel associated with synthetic compared to wood pulp

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materials. It is further noted that the BOUCHETTE reference also teaches the use of synthetic fibers in the middle layer; therefore, such modification would have been recognized by one having ordinary skill in the art as an alternative to the use of pulp material in the middle layer. Applicants' arguments indicating that BOUCHETTE does not show such embodiments in the examples and focused more on pulp have been considered but are not persuasive as the broader teachings of the reference do teach that such modification is an alternative modification. With regards to Appellants argument implying that the Examiner is removing the wood pulp fibers from the outer layers of the structure of SUSKIND, it is noted that the combination is SUSKIND and BOUCHETTE is substituting the outer layers containing pulp and PET of SUSKIND with the synthetic fiber layer taught by BOUCHETTE. It is further noted that the Examiner is not bodily incorporating the structure of BOUCHETTE into the material of SUSKIND as implied by Applicants, but substituting the outer layers of SUSKIND with those taught by BOUCHETTE as to maximize the desirable hand feel associated with synthetics compared to wood pulp as disclosed by BOUCHETTE.

With regards to the claimed Air Permeability, it is noted that the prior art of record provides the structural limitations of the claimed invention and such property, would be inherent to the structure of the prior art as the web formed from the combination of SUSKIND et al. and BOUCHETTE is similar to the present invention (i.e. It is made by hydro entanglement and has areas of low and high basis weight and uses similar fiber materials). Alternatively, air permeability is considered to be a cause effective variable within one skilled in the art of disposable personal care articles and it

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can be manipulated in the art of hydro entangled fabrics by manipulating the hydro entanglement conditions. It is well settled that determination of optimum values of cause effective variables such as permeability is within the skill of one practicing the art. In re Boesch, 205 USPQ 215 (CCPA 1980). This is evidenced herein as CEN et al. (US 6,428,799 B1) that shows that high air permeability (of at least $900 \text{ ft}^3/\text{min}/\text{ft}^2$) is desirable in substrates related to personal care articles suitable for cleansing. (Refer to Col. 1, lines 11-20) The reference discloses that Air Permeability is important because it is indicative of the amount of lather that can be generated by a particular batting material. The Air Permeability is proportional to the density and amount of lather that a particular batting material is capable of generating. (Col. 7, lines 47-50) It is further noted that the reference uses hydro entangled materials as their substrates. (Refer to Col. 39, lines 62 bridging Col. 40, lines 1-53)

- With regard to Appellant's argument indicating that Suskind et al. provides no suggestion or teaching that the textile disclosed would have any utility as a personal cleansing article, it is noted that on Col. 3, lines 55-58 of the reference it is disclosed that "the resulting fabric is soft and is suitable for use in disposable personal care or health care applications, or as a durable, multiple use fabric." It is also noted that the reference is directed to a high strength nonwoven fabric that aims to solve the problems of the prior art related to applications for use as household cloths, food service wipes and industrial machinery wipes. (Refer to Col. 1, lines 36-49)
- With regards to claims comprising a personal cleansing composition, it is noted that the cited prior art of WAGNER is also directed to hydro entangled substrates. Since the

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SUSKIND and BOUCHETTE are directed to hydro entangled substrates that find utility in the construction of wipes, the Examiner finds that the inclusion of a cleansing composition with lathering surfactant would have been recognized by one of ordinary skill in the art of wipes in the production of a personal cleansing product in view of the teachings of WAGNER.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


NORCATORRES
PRIMARY EXAMINER

Conferees:

Terrel Morris



Carol Chaney



Corrected 11/29/06 nltv